

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

SNOHOMISH COUNTY FARM BUREAU,

Petitioner,

v.

SNOHOMISH COUNTY,

Respondent.

**CASE No. 15-3-0003
(SCFB IV)**

**ORDER DENYING
RECONSIDERATION**

The Growth Management Hearings Board (Board) dismissed for lack of subject matter jurisdiction the petition of Snohomish County Farm Bureau (Farm Bureau), challenging Snohomish County Ordinance 14-120. The Farm Bureau filed a timely motion for reconsideration.¹

Having reviewed the Farm Bureau's motion, the Board provides three clarifications of its Order of Dismissal and denies reconsideration.

First, the Farm Bureau misreads the following sentence from the Order of Dismissal:

(2) "The Farm Bureau argues the ordinance is a tacit amendment of the County's zoning code and thus is within the Board's review jurisdiction."
(Order of Dismissal of 7/22/15, at 7)

The Farm Bureau lists this as one of "the Board's principal findings." Motion, at 2-3. However, the sentence is not a Board *finding* of review jurisdiction; rather, it is a summary of one of the Farm Bureau's contentions. It could have perhaps have been more clearly written:

(2) "The Farm Bureau argues the ordinance is a tacit amendment of the County's zoning code and thus, *the Farm Bureau contends, it is within the Board's review jurisdiction.*"

¹ Petitioner's Motion for Reconsideration of Subject Matter Jurisdiction Pursuant to WAC 242-03-555, filed July 28, 2015. The County did not respond to the motion.

1 Second, the Farm Bureau asserts the Board's *sua sponte* request for briefing on
2 subject matter jurisdiction indicates a "pre-determined decision." Motion, at 1-2. Not so.
3 The expedited briefing was designed to give the Farm Bureau maximum opportunity to
4 make its case.

5 WAC 242-03-530 provides the presiding officer shall have the authority to "inspect
6 the petition for review to determine whether, on its face, compliance with the jurisdiction and
7 standing requirements of the act is shown, and if compliance is not shown, to recommend
8 an action or to refer the issue to the board for resolution." In this case, the presiding officer
9 considered that deferring the jurisdiction question to the motions calendar would give the
10 County an opening and reply brief and Farm Bureau just a single response brief. The
11 presiding officer instead recommended an expedited briefing procedure that allowed the
12 Farm Bureau to present two briefs and limited the County to one. The expedited briefing
13 schedule did not indicate a pre-determined decision.
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15 Third, the Board's order dismissed the Farm Bureau's "tacit amendment" theory
16 stating:²
17

18 The *Farm Bureau offers no authority* for the Board to exercise review
19 jurisdiction based on "tacit amendment" to a development regulation, nor has
20 the Board found such authority. (Motion, at 8)

21 Here the Farm Bureau had two opportunities to brief its case for jurisdiction and provided no
22 case law for its tacit amendment argument. In the motion for reconsideration, the Farm
23 Bureau belatedly attempts to construct authority from the *Alexanderson* case cited by the
24 Board in a footnote of the dismissal order.³ A motion for reconsideration is not intended to
25 give a petitioner an opportunity to reargue a case or fill in omissions.⁴ "[R]aising new
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29 ² Order of Dismissal, at 8 (emphasis added).

30 ³ Order of Dismissal, at 8, n. 15: "The Court of Appeals in *Alexanderson v. Board of Clark County*
31 *Commissioners*, 135 Wn. App. 541, 548-9, 144 P.3d 1219 (2006), ruled that an interlocal agreement which
32 contravened an adopted comprehensive plan policy was a *de facto* comprehensive plan amendment within
Board jurisdiction. The court's reasoning has not been extended to development regulations."

⁴ *Petso v. City of Edmonds (Petso II)*, GMHB Case, No. 09-3-0005, Order Denying Reconsideration (Sep. 4,
2009), at 2; *Brinnon Group v. Jefferson County*, GMHB Case No. 08-2-0014, Order on Reconsideration (Oct.
14, 2008), at 6-7.

arguments, or even making a more precise argument” is not grounds for reconsideration.⁵
Accordingly, the Board denies reconsideration of its Order of Dismissal.

ORDER

- Petitioner’s Motion for Reconsideration of Subject Matter Jurisdiction Pursuant to WAC 242-03-555 is **denied**.
- **Case No. 15-3-0003 is closed.**

ENTERED this 17th day of August, 2015.

Margaret Pageler, Board Member

Cheryl Pflug, Board Member

William Roehl, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.⁶

⁵ *Neighborhood Alliance of Spokane County v Spokane County*, Case No. 14-1-0002, Order Denying Reconsideration (Nov. 17, 2014), at 2, citing WAC 242-03-830.

⁶ A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.